

Title	Allocation of Service of Process fees for Domestic Violence (DVPA) and Civil Harassment Orders (adopt form CH-101/DV-290)
Summary	The proposal would adopt a form to help the courts and the sheriff or marshal allocate service of process fees for specified Domestic Violence Prevention Act (DVPA) and civil harassment orders.
Source	Family and Juvenile Law Advisory Committee
Staff	Tamara B. Abrams, 415-865-7712
Discussion	<p>Assembly Bill 2030, effective January 1, 2003, authorizes the sheriff or marshal to serve, without charge, Domestic Violence Prevention Act (DVPA) restraining orders and civil harassment orders relating to stalking or sexual assault. AB 2030 requires the Judicial Council to establish a policy that allows the sheriff or marshal to bill the courts for the cost of serving such orders. The legislation also requires the Judicial Council to develop forms for litigants to seek free service of process by the sheriff or marshal.</p> <p><i>Background</i></p> <p>AB 2030 (Stats. 2002, ch. 1009) amended Code of Civil Procedure section 527.6 by adding new subdivision (p). That subdivision requires the Judicial Council to develop an application form for petitioners to request that sheriffs or marshals serve certain specified protective orders, restraining orders, and injunctions without prepayment of service fees. The subdivision also specifies which orders can be served without charge. Code of Civil Procedure section 527.6(p)(1) states:</p> <p>Notwithstanding any other provision of law, upon the application of the petitioner there shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply:</p> <p>A. The protective order, restraining order, or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.</p> <p>B. The protective order, restraining order, or injunction issued pursuant to this section is based upon a credible threat of violence resulting from a threat of sexual assault. As used in this subparagraph, "sexual assault" means the offenses</p>

enumerated in Section 1036.2 of the Evidence Code.

C. The protective order, restraining order, or injunction is issued pursuant to Section 6222 of the Family Code, unless the applicant is eligible for a waiver of the payment of the fee for serving the order pursuant to subdivision (b) of that section.

#### *Allocation of fees for service of orders*

Although section 527.6(p)(1) says that there is to be no fee for service of one of the specified protective or restraining orders or injunctions, other parts of AB 2030 indicate that this means only that the sheriff or marshal is not to charge or collect the fee from the protected person. Under Government Code section 6103.2(b)(4), also amended by AB 2030, the ordinary fees charged by sheriffs and marshals for service, for cancellation of service at the request of the party who originally requested service, and for preparation of a not-found return showing that service was attempted but failed, are to be billed to the superior court that issued the orders to be served.

However, Government Code section 26720.5 states that fees otherwise payable by a litigant to the sheriff or marshal for service of process shall be *waived* in any case in which the litigant is permitted by the court to proceed in forma pauperis. It is clear that the sheriff or marshal must waive any fee for serving restraining orders for persons who qualify for a fee waiver and can bill the court for serving restraining orders for persons who do not qualify for a fee waiver.

Thus, in every case where the litigant requests free service of an applicable order, the litigant would be directed to complete an *Application For Waiver of Court Fees and Costs* (form 982(a)(17)).

#### *Proposed Form*

The proposed mandatory form would establish a protocol for a litigant to ask the sheriff or marshal to serve an applicable civil harassment order or a DVPA order for free.

The form would also serve as a tracking tool for the courts and law enforcement agencies for the service fees. It would clarify that law enforcement agencies can bill the courts for service only in those cases where the litigant did *not* qualify for a fee waiver.

The original signed form would be filed with the court; the litigant or

the court would then transmit a copy of the form to the sheriff or marshal, along with the court order, for service. After service, the sheriff or marshal would indicate on the form that service was completed and the fee, if any. The sheriff or marshal would then submit the form to the court for payment.

Pending approval by the Judicial Council, courts are encouraged to use this draft form and to report back with their experiences.

The proposed form is attached at pages 4. Excerpts of the relevant statutes are attached at page 5.

---

Attachments

## Selected Provisions of Relevant Statutes

### *Family Code section 6222*

- (a) There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by this division if the request for the other order is necessary to obtain or give effect to a protective order. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.
- (b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. If the petitioner is not eligible for the fee waiver pursuant to this subdivision, he or she may be eligible pursuant to paragraph (1) of subdivision (p) of Section 527.6 of the Code of Civil Procedure.

### *Code of Civil Procedure section 527.6 (p)*

- (1) Notwithstanding any other provision of law, upon the application of the petitioner there shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply:
- (A) The protective order, restraining order, or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.
  - (B) The protective order, restraining order, or injunction issued pursuant to this section is based upon a credible threat of violence resulting from a threat of sexual assault. As used in this subparagraph, "sexual assault" means the offenses enumerated in Section 1036.2 of the Evidence Code.
  - (C) The protective order, restraining order, or injunction is issued pursuant to Section 6222 of the Family Code, unless the applicant is eligible for a waiver of the payment of the fee for serving the order pursuant to subdivision (b) of that section.
- (2) The Judicial Council shall prepare and develop application forms for applicants who wish to avail themselves of the services described in this subdivision.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and State Bar number, if attorney):  ADDRESS WHERE YOU WANT MAIL SENT:  TELEPHONE NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		<b>FOR COURT USE ONLY</b>          
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF:  DEFENDANT:		
<b>REQUEST AND ORDER FOR FREE SERVICE OF RESTRAINING ORDER</b>		CASE NUMBER:  Judge: Dept.:

**PROTECTED PERSON'S REQUEST**

1. I ask the Sheriff or Marshal to serve the restraining order for free because (check either item a or b):
- a. ☐ I asked for a restraining order on form DV-100.
- b. ☐ I asked for a restraining order on form CH-100, and my request was based on my fear of (you must check at least one box)
- ☐ sexual assault.
- ☐ stalking.
2. I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.
- Date: \_\_\_\_\_

(TYPE OR PRINT YOUR NAME)

(SIGN YOUR NAME)

**COURT ORDER**

3. The court reviewed the protected person's completed *Fee Waiver Request* and finds that (check one box only):
- a. ☐ The protected person qualifies for a fee waiver. The order can be served by law enforcement for free.
- b. ☐ The protected person does not qualify for a fee waiver. The order can be served by law enforcement for free.\*

Date: \_\_\_\_\_



JUDICIAL OFFICER

**Sheriff or Marshal will fill in box below and return a copy of this form to the court listed above.**

The Order was served on (date): \_\_\_\_\_ Fee: \$ \_\_\_\_\_

\* NOTICE to Law Enforcement: Government Code section 6103.2(b) allows the sheriff or marshal to bill the court ONLY for orders or injunctions described in subdivision (p)(1) of Code of Civil Procedure section 527.6. Law enforcement may bill the court for service only if box 3(b) is checked above.